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The "Win-Win" Approach to Title I of the Americans with Disabilities Act: Preparing College Students with Disabilities for Career-Entry Placements After Graduation

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Abstract

As access and opportunity for college students with disabilities continue to improve under Title II of the Americans with Disabilities Act of 1990 (ADA), post-graduation follow-up studies find graduates with disabilities at a decided career development disadvantage. Title I (Employment) of the ADA provides specific procedures for requesting and implementing reasonable on-the-job accommodations, but the procedures require the person with a disability to initiate the accommodation process. In this paper, the "win-win" approach to reasonable accommodations is described as a three-step program designed to assist people with disabilities in (a) identifying their accommodation needs, (b) understanding their rights to accommodations and procedures for requesting them, and (c) communicating their needs to employers. Student services professionals can utilize the "win-win" approach to prepare graduating students with disabilities to advocate for themselves in seeking, securing, and maintaining competitive employment.

In response to the initiatives in federal legislation and the growing societal commitment to the concerns of individuals with disabilities, American colleges and universities have taken tremendous strides over the past two decades to promote access and opportunity for students with disabilities. The most significant catalysts of this encouraging trend have been the Americans with Disabilities Act of 1990 (ADA) and Section 504 of the Rehabilitation Act. Enactment of those statutes has resulted in enhanced disability

awareness and reduction of attitudinal and architectural barriers on college and university campuses (Serebreni, Rumrill, Mullins, & Gordon, 1993; Johnson & Rubin, 1986; Marion & Iovachini, 1983.).

Improved physical and program access in higher education has also been promoted by national organizations such as the Association of Higher Education and Disability (*AHEAD*) and the National Association of Student Personnel Administrators (*NASPA*). Greater access to higher education for persons with disabilities is especially important when viewed in light of the Harris poll finding that a person with a disability who has completed a four-year college degree is four times more likely to be employed than is a person with a disability who never attended college (Louis Harris & Associates, 1986).

Although Harris' findings underscore the importance of higher education to the employment of people with disabilities, comparisons with nondisabled students still reveal that students with disabilities are at a decided disadvantage. Johnson and Rubin (1986) reported a higher drop-out rate among college students with disabilities than among nondisabled students. Even students with disabilities who graduated were unemployed at a rate (48%) more than twice that for nondisabled students (21%). These troubling 1986 employment figures have likely been exacerbated by the recent recession and the small number of new jobs created during the post-recession recovery (Greenwald, 1993).

Students with disabilities themselves are gravely concerned about their bleak career prospects. In a survey of 1,448 college students with disabilities from 39 states, Schriener and Roessler (1990) found two career issues among the top five concerns identified by respondents. Similarly, Gallaudet University students cited four career problems in their top five concerns (Schriener & Roessler, 1991). These career related concerns identified by respondents to Schriener and Roessler's companion surveys included (a) whether their college curricula had adequately prepared them for employment, (b) their job-seeking proficiency, and (c) the availability of resources to assist them in obtaining career-entry placements.

The "win-win" approach to reasonable employment accommodations can be utilized to meet the expressed postgraduate career needs of college students with disabilities. The tripartite self-efficacy training program can assist student services professionals in preparing students with disabilities to seek, secure, and maintain career-entry positions commensurate with their abilities, credentials, and interests.

Title I of the ADA and the "win-win" Approach

In essence, the "win-win" approach is a social skills training program designed to avail persons with disabilities of the antidiscrimination provisions in Title I (Roessler & Rumrill, 1993). Because of the ADA's strong emphasis on consumer initiation of its procedures, people with disabilities must be encouraged to confidently and competently assert their rights to reasonable employment accommodations. The three-step "win-win" approach enables participants to (a) identify their on-the-job accommodation needs, (b) understand their rights to reasonable accommodations under Title I, and (c) develop strategies for appropriately communicating their needs to employers, thereby preparing them for the "reasonable accommodation" request process that is prescribed in the ADA's Title I regulations (Equal Employment Opportunity Commission & Department of Justice, 1991).

Step 1: Identifying Accommodation Needs

In preparing graduating students with disabilities to obtain career-entry employment, student services professionals should first assist the student in identifying prospective accommodation needs for the position he or she is seeking. The Work Experience Survey (WES) is a structured interview that enables respondents to determine career adjustment and advancement barriers in four areas: worksite accessibility, job accommodations and modifications, job mastery, and job satisfaction (Roessler, 1991). The respondent also ranks the top three barriers to job performance in order of importance, suggests a reasonable accommodation for each, and describes who can help to implement reasonable accommodations and how they can help. The 20-minute interview provides a structured mechanism by which to identify the student's prospective accommodation needs.

Step 2: Understanding Legal Rights and Procedures

Once the student has completed the WES and identified potential barriers on the job being sought, the ADA's key Title I terms and provisions must be explored. The "win-win" approach follows a collaborative, non-adversarial procedure that does not require formal legal assertion, but students with disabilities should know their rights and recourses before beginning any dialogue about accommodations with an employer. Here are some Title I definitions and procedures with which students and practitioners should become familiar.

Employer. As of July 26, 1994, public and private employers with 15 or more employees are required to comply with the ADA's Title I provisions. In essence, Title I prohibits employment discrimination against qualified people with disabilities. It should be noted that Title I leaves intact the provisions of Sections 501 -504 of the Rehabilitation Act of 1973, which cover institutions receiving federal funds, but it provides some changes to the application and accommodation processes. For example, an employer may not solicit disability-related information on application forms or during job interviews. Disability-related information may be solicited only after an official job offer has been made.

Disability. A disability is defined as a physical or mental impairment that substantially limits one or more major life activity. These major life activities may include walking, seeing, hearing, speaking, learning, or working (Equal Employment Opportunity Commission & Department of Justice, 1991).

Qualified. A qualified person with a disability is one who satisfies the primary requirement of the position and who can perform essential functions of the job with reasonable accommodations, if required. To be protected against discriminatory employment practices, the person must have a disability and be qualified for the position that he or she seeks or holds.

Essential functions. Essential job functions are those primary duties which the person must be capable of performing, with reasonable accommodations if required. Essential functions must be established on an official written job description. Job descriptions must be given to all prospective employees and made available to all current workers (Rumrill & Gordon, 1992).

Reasonable accommodations. Reasonable accommodations can be defined as modifications to a job or the work environment that enable a qualified applicant or employee with a disability to perform essential job functions. Reasonable accommodations also include adjustments to ensure that a qualified individual with a disability has rights and privileges in employment that are equal to those of nondisabled employees (Rumrill & Gordon, 1992); Examples of accommodations include technological devices (computer systems and assistive -electronics), architectural modifications (ramps, elevators, and widened doorways), work schedule modifications, and/or changes in the work environment (lighting, wheelchair-accessible pathways, and climate control). Employers are required to provide reasonable accommodations unless implementation would constitute an undue hardship.

Undue hardship. An accommodation may be labeled an undue hardship if it exceeds the bounds of practicality. That is, an employer would not be required to provide an accommodation if it costs more than alternatives that are equally effective, requires extensive and disruptive renovations, or negatively affects other employees or customers (Equal Employment Opportunity Commission & Department of Justice, 1991). Undue hardships are determined on a case-by-case basis, and such criteria as (a) the cost and nature of the accommodation, (b) the overall financial resources of the facility, (c) the overall financial resources of the employer, and (d) the type of operation of the covered employer are prescribed in the Title I regulations.

These definitions provide protections for people with disabilities from the application process to attainment, performance, and advancement on the job. By understanding Title I's definitions and regulations regarding reasonable accommodations, graduating students with disabilities will be better prepared to discuss their identified accommodation needs with employers.

Step 3: Communicating Accommodation Needs

Once students with disabilities have identified their prospective on-the-job accommodation needs and understand Title I's key terms and provisions, the third step of the "win-win" approach involves communicating one's needs to an employer in a face-to-face meeting. Until the person with a disability identifies himself or herself as such, the employer may not solicit disability-related information. Conversely, the employer is not required to provide accommodations unless the applicant or employee discloses a disability. Following initial disclosure, applicants with disabilities should consider the factors which follow. These can be practiced in role-play and small-group settings prior to exiting the college environment. They are designed to facilitate a friendly and informal dialogue between the person with a disability and employer without invoking the formal procedures of the ADA (Roessler & Rumrill, 1993). Student services professionals can use these guidelines to assist students with disabilities in communicating with employers in "win-win" fashion.

In the meeting...

1. Dress in appropriate clothes.
2. Arrive on time for the meeting.
3. Shake hands with the employer.
4. Wait to be invited before you sit.
5. Thank the employer for meeting with you. Wait until other interview activities have been completed before you present your disability.
6. Use appropriate body language - maintain eye contact, squarely face the employer, lean forward, nod to indicate attention, and assume a receptive facial expression.
7. Use appropriate verbal language. Answer questions honestly and directly. Use nonadversarial terms in presenting your accommodation needs (I would like to explore with you.... It makes sense for both of us to..., and Together, we could come up with..., rather than I want..., I'm entitled to.... and You have to ...).
8. Be positive. Focus on the future problems you can solve together.

Collaborating with the employer to identify solutions...

1. Generate all possible accommodations that would help you to perform your job duties.
2. Evaluate each accommodation option in terms of its effectiveness for you, and consider, from the employer's standpoint, the cost-effectiveness of each.

3. Remember, the ADA requires that the employer provide a reasonable accommodation. This does not mean the most reasonable one, so it is important to be willing to compromise.

4. Rank the accommodations in order of your preference. Ask the employer to rank them in order of his or her preference.

5. Compare the two lists. If you and the employer do not agree on what the most reasonable accommodation should be, point out the mutual benefits of your preferred accommodation. Convince the employer that your idea is the best one for you, not that the alternative is wrong. Be prepared to negotiate an agreement.

6. Negotiate from a position of equal strength by keeping in mind your ADA protections. Do not state your right to appeal the employer's accommodation decision, but know that it exists. If you simply cannot agree, and you believe that the accommodation the employer has proposed would not enable you to do your job, you may contact (a) the personnel office in the company, (b) the Equal Employment Opportunity Commission office in your area, (c) an attorney, or (d) a disability rights advocate.

Implementing reasonable accommodations...

1. Once you have been hired and your employer has provided an accommodation, take some time to get used to the arrangement or modification. If the accommodation involves technology, ask for appropriate training.

2. Consider whether your accommodation enables you to be more productive on the job. Discuss the effectiveness of the accommodation with your employer.

3. Be aware of changes in your medical condition and how those changes might be addressed through the "win-win" process.

4. Remember, the ADA does not limit the number or types of accommodations that can be provided.

5. Lastly, frequent contact with your employer regarding your condition, accommodations, and job performance makes you a more productive employee. Your employer will appreciate updates on your progress, and you will both enjoy the benefits of a good working relationship.

But, what if?... In most cases, the collaborative, "win-win" strategy will result in acceptable solutions to students' identified on-the-job needs, but students should be prepared for legal recourses in the event of employer discrimination. If the prospective employer simply will not cooperate, graduating students should be advised to file a formal complaint with the Equal Employment Opportunity Commission (1 -800-669-4000 [voice] or 1-800-324-5481 [TDD]). EEOC complaints must be received within 180

days of the discriminatory conduct. Formal complaints should always be promulgated with the assistance of an attorney or disability rights advocate.

Conclusion

As college students with disabilities initiate careers in their chosen fields, they are protected from employment discrimination by a comprehensive civil rights statute. However, the ADA requires considerable responsibility on the part of the consumer in initiating and participating in its procedures. Accordingly, students with disabilities must be encouraged to advocate for themselves in requesting and implementing reasonable accommodations that allow them to perform essential functions of their career-entry positions.

In encouraging the self-advocacy skills that are necessary for effective participation in the "win-win" process, issues specific to students who cope with unobservable disabilities must be considered. For example, a student with a psychiatric condition such as paranoid schizophrenia may be hesitant to disclose his or her illness, and a student with a specific learning disability may not want a prospective employer to know about difficulties that do not affect that student's ability to perform the job. In general, if a student's disability does not result in a work limitation and no accommodation is needed, there is no obligation or reason to disclose.

By employing the "win-win" approach to (a) identifying accommodation needs, (b) understanding legal rights and procedures, and (c) communicating accommodation needs to employers, student services professionals can greatly enhance students' prospects for competitive employment after graduation. The information/skills training model will enable students to efficaciously participate in the accommodation process, thereby increasing their opportunities for ongoing, self-initiated career development.

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